IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6427 OF 2006
AND
WRIT PETITION NO. 6429 OF 2006.

Udaysinh Vasantrao Gaykwad & Anr.... .....
Petitioners
V/s
Nandkumar Gurupad Kolhapure & Ors... .....
Respondents.

Mr.N.J.Patil, Adv. for the petitioners.

Mr.S.S.Patwardhan, Adv. For respondent No.1 (in W.P.No.6427/07) and for respondent No.4 (in W.P.No.6429/07).

CORAM: A.P. DESHPANDE, J.
14.6.2007

PC:

The present writ petitions are between the same parties and the issue involved is also the same. Hence both writ petitions are heard together and are being disposed of by this common order. The suit property originally belonged to one Shri Patwardhan. Respondent No.Gurupad Kolhapure was the tenant in the said property. The present respondent Nos. 1 to 3 are the legal heirs of Gurupad Kolhapure. In the year 1995 a suit was filed in the Court of Civil Judge bearing Regular Civil Suit No.127/95 by the predecessors in title of respondents 1 to 3 against the original owner Shri Patwardhan. The said suit was in relation to the present suit property. The predecessors in title of the present respondents 1 to 3 had claimed declaration that he is a permanent lessee of the suit property and had also sought perpetual

injunction against the owner of the property. In the said suit the husband of the present petitioner No.2 had appeared as an Advocate for the owner Shri Patwardhan. It may be incidentally stated that the petitioner No.2 so also her husband are both practicing advocates. The suit was decreed in favour of predecessor in title of respondents 1 to 3. Thereafter the parties entered into settlement out of Court and pursuant to the same owner Shri Patwardhan executed a sale deed in favour of respondents 1 to 3 on 28.7.04. It is thus undisputed that with effect from 28.7.04 respondents 1 to 3 became owners of the suit property.

2. The present petitioners instituted a civil suit on the basis of agreement of sale purported to have been executed by respondents 1 to 3 on 30.7.04. The suit was only for injunction and an application for temporary injunction was also filed along with plaint. The suit was filed in the trial Court on 26.12.04 and surprisingly enough petitioners claimed that sale deed has been executed in their favour on the next day of the filing of the suit i.e. 27.12.04. The sale deeds are allegedly executed on the basis of power of attorney purported to have been executed by respondents 1 to 3. The agreement of sale is very much in dispute, whereas in regard to the execution of sale deed on the basis of power of attorney, it is the case of the respondents 1 to 3 that the said power of attorney was never executed. Respondents 1 to 3 have contended before the trial Court that the present petitioner No.2 and her husband were the advocates representing respondents 1 to 3 in civil so also criminal cases and taking advantage of fiduciary relationship of counsel and client the petitioner No.2 and her

husband obtained signature of respondents 1 to 3 on various blank papers and the said signatures are being misused for the purposes of setting up a claim of title to the suit property.

3. Learned counsel for the petitioners made the following submissions for claiming injunction and the same are to the effect :

(i) That the petitioners are in possession of the suit property;

(ii) That the said possession was pursuant to execution of an agreement of sale by respondents 1 to 3;

(iii) That the petitioners have paid the entire amount of consideration to respondents 1 to 3 in the sum of Rs.8,75,000/- in cash;

(iv) That the petitioners have paid the consideration for the purchase of suit property to the original owner Shri Patwardhan so also respondents 1 to 3 and on that basis claim that prima facie good case has been made out for grant of injunction.

4. The trial Court initially granted ex-parte temporary injunction against present respondents 1 to 3 on the basis of agreement of sale and respondent No.4 herein came to be impleaded as defendant at a later point of time and thus the trial Court has clarified that the temporary injunction order is not passed against respondent/defendant No.4. It is the case of the respondents 1 to 3 that when the matter was taken up for orders on temporary injunction application ex-parte, the petitioner No.2 and her husband set up an advocate by name Shri M.P.Medsinge purportedly representing respondents 1 to 3 whereas according to respondent Nos. 1 to 3 they had never engaged him as

counsel and on account of concession made available by him an ex-parte temporary injunction came to be granted. As stated herein above the trial Court confirmed the temporary injunction order to the extent it was granted against defendants/respondents 1 to 3 however rejected the prayer for injunction against defendant/respondent No.4. The present respondents 1 to 3 being aggrieved by the order of temporary injunction preferred miscellaneous civil appeal before the District Judge and the present petitioners being aggrieved by refusal to grant injunction against defendant No.4 as well carried miscellaneous civil Appeal before the District Judge. The First Appellate Court allowed the appeal filed by respondents 1 to 3 (defendants 1 to 3) and vacated temporary injunction granted against them. The appeal filed by the present petitioners came to be dismissed and hence the present petitions are filed by unsuccessful plaintiffs. Perusal of the order passed by First Appellate Court reveals in the first place that the petitioners' conduct is mala fide and the Court has reached a prima facie conclusion that the petitioner No.2 and her husband who are both advocates have misused their position by taking advantage of fiduciary relationship of advocate and client. The First Appellate Court has doubted the genuineness of the transaction claimed by the plaintiffs. Various circumstances which suggest the conduct of the petitioners to be far from bonafide are properly dealt within the order. It is really strange circumstance wherein petitioners/plaintiffs claim that sale deed has been executed in their favour in as much as suit came to be filed against present respondents 1 to 3 on 26.12.04 and on the very next day, under power of attorney purported to

have been executed by respondents 1 to 3 sale deeds are said to have been executed in favour of the plaintiffs by power of attorney holder, which power of attorney was purportedly executed about ten years earlier. As the First Appellate Court has recorded a finding that the petitioners/plaintiffs have not approached the Court with clean hands and as their conduct is not bonafide it has rightly proceeded to reject the appeal filed by the petitioners and has rightly allowed the appeal filed by respondents 1 to 3. In regard to conduct of petitioner No.2 the First Appellate Court has prima facie found her to be guilty of professional misconduct. The finding recorded by First Appellate Court about plaintiffs not having approached the Court with clean hands is supported by relevant circumstances and hence does not require any interference at this stage, more so, in exercise of writ jurisdiction. Perused the orders impugned. Same go to take very possible view of the matter and hence I decline to interfere with the same. Both the Writ petitions thus stand summarily dismissed.

5. Counsel for the petitioners has also prayed that as temporary injunction is operating till date on account of grant of stay by First Appellate Court the same should be continued till disposal of the suit. I am not in agreement with the said submission as I have concurred with the First Appellate Court that the petitioners have failed to make out prima facie case, hence there is no question of continuing temporary injunction till final disposal of the suit.

6. At this stage learned counsel for the petitioners seeks stay of this order for a period of eight weeks. Request stands rejected.

14.6.07.